92-1610

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

FRANK LONGO,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,
ALDEN VICTORIA, in his official capacity
as Postmaster of the Torrington Post Office,

Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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STATEMENT

Pursuant to Rule 15.7 of the Rules of this Court, Frank Longo respectfully submits this Supplemental Brief in order to discuss the implications of this Court's recent decision in Lamb's Chapel and John Steigerwald v. Center Moriches Union Free School District, 1993 WL 187864 (U.S.) (June 7, 1993).

REASONS FOR GRANTING THE WRIT

The Lamb's Chapel decision underscores the need for plenary review in Longo, for two reasons.

First: in our certiorari petition earlier this year, we identified two distinct prongs to the designated forum issue that the case raises. One was whether a forum has been designated in the first place. The other was whether, once a forum has been designated for the discussion of a wide range of subjects, a selective subject-matter exclusion must

survive strict scrutiny. Lamb's Chapel, we anticipated, might decide the second question, but it would not decide the first.

Lamb's Chapel, however, did not decide the second question either. Though it found "considerable force" in the Chapel's argument (which is also ours) that selective subject-matter exclusions in generally open designated fora are suspect, 1993 WL 187864 at 4, it based its holding on a different ground: that the school board had engaged in impermissible viewpoint discrimination among speakers of the same character. Thus, both of the designated forum questions in Longo remain

unresolved. This Court should grant certiorari and resolve them.[1]

Second: the school district asserted, in Lamb's Chapel, a compelling interest in avoiding an establishment clause violation. In the district's view, the violation would occur because any religious speech on school property -- even occasional religious speech by outsiders in a

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[1] Under an "objective" theory of forum-analysis, the two issues meld. Whether a forum has been opened, and whether, once opened, it may be limited to the discussion of particular subjects, both depend upon how wide a range of speech is already countenanced on the property. According to this view, the Postal Service has opened a forum by at least tacitly allowing a wide range of speech; and, because it allows a wide range of speech, its selective exclusion of partisan campaigning requires extraordinary justification. See United States v. Kokinda, 110 S.Ct. 3115, 3132-3133 (1990) (Brennan, Marshall, Blackmun and Stevens, JJ., dissenting); id. at 3125 (Kennedy, J., concurring in the judgment).

generally open forum -- would, necessarily and in all circumstances, convey the impression that the school was endorsing the religious message. 1993 WL 187864 at 5-6. The Court not only rejected this argument; it intimated that the rule excluding all religious speech might not even survive rational basis review. 1993 WL 187864 at 8, n.6. If that be so, the selective exclusion of all partisan campaigning on postal service property, in order to avoid the appearance that the postal service is endorsing the candidate, should likewise fail rational basis review. This Court should grant certiorari in order to resolve this issue as well.

CONCLUSION

For the reasons set forth in the certiorari petition and in this

Supplemental Brief, the petition should be granted.

Respectfully submitted,

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